
The EPA Administrator signed the following proposed rule on June 6, 2005. It is being submitted for publication in the Federal Register. While EPA has taken steps to ensure the accuracy of this Internet version, it is not the official version of the rule. Please refer to the official version in a forthcoming Federal Register publication and on GPO's Web Site. The rule will likely be published in the Federal Register in August 2005. You can access the Federal Register at: http://www.access.gpo.gov/su_docs/aces/aces140.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-7937-2]

RIN 2060-AN19

Control of Emissions of Air Pollution From Diesel Fuel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct, amend, and revise certain provisions of the Highway Diesel Rule adopted on January 18, 2001 (66 FR 5002), and the Nonroad Diesel Rule on June 29, 2004 (69 FR 38958). First, it proposes minor corrections to clarify the regulations governing compliance with the diesel fuel standards. These minor corrections focus primarily on the Nonroad Rule, however, some may affect provisions contained in the Highway Rule that were overlooked at the time the Nonroad Rule was finalized. Second, it proposes amending the designate and track provisions to account for companies within the fuel distribution system that perform more than one function related to fuel production and/or distribution. This would alleviate the problem of inaccurate volume balances due to a company performing multiple functions. Finally, with respect to the generation of fuel credits, it proposes revising the regulatory text to allow refiners better access to early highway diesel fuel credits. The intention of this amendment is to help ensure a smooth transition to ultra low-sulfur diesel fuel nationwide.

We are publishing in the "Rules and Regulations" section of today's Federal Register a direct final rule that will correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements without further EPA action unless we receive adverse comment. We have explained our reasons for today's action in detail in the preamble to the direct final rule. If we receive adverse comment, we will withdraw the direct final rule prior to its effective date, and will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by [insert date 30 days after Federal Register publication]. As explained in section II of the direct final rule, we do not expect

to hold a public hearing, however, requests for a public hearing must be received by [insert 15 days after Federal Register publication]. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Comments: All comments and materials relevant to this action should be submitted to Public Docket No. OAR-2005-0134 by the date indicated under DATES above. Materials relevant to this rulemaking are in Public Docket [insert] at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566-1742 and by facsimile at (202) 566-1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Tia Sutton, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214-4018, fax (734) 214-4816, e-mail sutton.tia@epa.gov or Emily Green, see address above; telephone (734) 214-4639, fax (734) 214-4816, e-mail green.emilya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that produce, import, distribute, or sell highway and/or nonroad diesel fuel. Affected Categories and entities include the following:

Category	NAICS Code ^a	Examples of potentially affected entities
Industry	324110	Petroleum refiners.
Industry	422710	Diesel fuel marketers and distributors.
Industry	484220	Diesel fuel carriers.

^a North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in “FOR FURTHER INFORMATION CONTACT.”

B. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

On January 18, 2004, we published the final Highway Rule (66 FR 5002) which is a comprehensive national program to greatly reduce emissions from diesel engines by integrating engine and fuel controls as a system to gain the greatest air quality benefits. Subsequently, we adopted the Nonroad Rule (69 FR 38958) on June 29, 2004 to amend the Highway Rule to include Nonroad equipment and fuel to further the goal of decreasing harmful emissions. After promulgation of these rules, we discovered several typographical errors and it also became evident that several additions or deletions were necessary to clarify portions of the regulations. This rule would correct those errors and serve to clarify the regulations to facilitate compliance.

Along with these minor clarifications, this rule would modify the text of the designate and track provisions to include provisions for companies that perform more than one function in the fuel system. For example, as these provisions are currently written, fuel distributors are only required to report on the volumes of fuel received and delivered. If the same company also produces fuel internally (acts as a refiner or importer), its receipts and deliveries reported will not balance. This rule would allow such companies to balance their volume reports in compliance with the designate and track regulations.

Finally, this rule would revise the regulatory text of the Nonroad Rule to allow refiners greater access to early fuel credits. The purpose of this change is to ensure a smooth transition to ultra low-sulfur diesel fuel nationwide. For additional discussion of these changes, see the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, we are publishing a direct final rule in the “Rules and Regulations” section of today’s Federal Register. However, we are publishing this notice of proposed rulemaking to serve as the proposal to adopt the provisions in the direct final rule if adverse comments are filed. If we receive adverse comment on one or more distinct amendment, paragraphs, or sections of the direct final rulemaking, or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal of the proposed direct final rule in the Federal Register indicating which provisions will become effective and which provisions are being withdrawn due to

adverse comment. We will address all public comments received in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of the direct final rulemaking for which we do not receive adverse comment will become effective according to the DATES section in the direct final rule, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Because this rule would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements, it would not be a significant regulatory action and is not subject to the requirements of Executive Order 12866. There would be no new costs associated with this rule. A Final Regulatory Support Document was prepared in connection with the original regulations for the Highway Rule and Nonroad Rule as promulgated on January 18, 2001 and June 29, 2004, respectively, and we have no reason to believe that our analyses in the original rulemakings were inadequate. The relevant analyses are available in the docket for the January 18, 2001 rulemaking (A-99-061) and the June 29, 2004 rulemaking (OAR-2003-0012 and A-2001-28)¹ and at the following internet address: <http://www.epa.gov/cleandiesel>. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden, as it merely corrects several typographical errors, modifies the designate and track regulations to account for companies that perform more than one function, and provides increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements for the original Highway Rule (66 FR 5002, January 18, 2001) and the Nonroad Rule (69 FR 38958, June 29, 2004) and has assigned OMB control number 2060-0308 (EPA ICR #1718). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue,

¹During the course of the Nonroad Rule, the Agency converted from the legacy docket system to the current electronic docket system (EDOCKET).

NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we certify that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not impose any new requirements on small entities. This rule would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule would contain no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule would impose no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule would contain no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This rule would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. The requirements of UMRA therefore would not apply to this action. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of UMRA policy.

E. Executive Order 13132: Federalism

This rule would not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Although Section 6 of Executive Order 13132 did not apply to the Highway Rule (66 FR 5002) or the Nonroad Rule (69 FR 38958), EPA did consult with representatives of various State and local governments in developing these rules. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule would not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This rule would

merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, Executive Order 13175 would not apply to this rule. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to the Executive Order because it would not be economically significant, and would not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule would not be a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it would not likely to have a significant adverse effect on the supply, distribution or use of energy. This rule would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements.

I. National Technology Transfer and Advancement Act

This rule would not involve technical standards. It would merely correct several typographical errors, modify the designate and track regulations to account for companies that perform more than one function, and provide increased incentive for early compliance with the ultra low-sulfur diesel fuel requirements. Thus, we have determined that the requirements of the NTTAA would not apply. See the direct final rule EPA has published in the “Rules and Regulations” section of today’s Federal Register for a more extensive discussion of NTTAA policy.

IV. Statutory Provisions and Legal Requirements

The statutory authority for this action comes from sections 211(c) and (i) of the Clean Air Act as amended 42 U.S.C. 7545(c) and (i). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1). Additional support for the procedural and enforcement related aspects of the rule comes from sections 144(a) and 301(a) of the Clean Air Act. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated:

Stephen L. Johnson, Administrator.